IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO. 241 OF 2007

M/s. K. M. Developers & 13 ors. ... Petitioners.

V/s.

Anant Girdharlal Shah & 3 ors. ... Respondents.

Mr. Satyajit Sen i/by Mr. Denzil D'Mello for the petitioners.

Mr. Ranjit Shetty i/by M/s. PDS Legal for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 8th June, 2007

P.C.:-

The petitioners have invoked the provisions under Sections 12,13, 34 and 37 of the Arbitration and Conciliation Act-1996 (for short,"The Arbitration Act") and prayed as under:-

a) The learned Arbitrator (Justice (Retd.) Arvind V. Savant) be removed as a Arbitrator in arbitration proceedings No. 22, 23,24,25, 26 and 37 of 2001 and a new arbitrator be appointed in his place and the order passed by him on written statement of reasons dated 17/04/2007, in his minutes of the 16th meeting be set-aside and the application dated 16/04/2007 be allowed and be held as valid, legal and correct.

b) pending the final hearing and disposal

of this appeal/applicastion the proceedings of the abritration before the sole arbitrator Justice (Retd.) A.V. Savant) be stayed and the operations and implementation of all the orders/awards passed by the arbitrator (Justice (Retd.) A.V.Savant) including the minutes of the 16th meeting dtd. 21/04/2007.

c) Any other reliefs, as though fit in the interest of justice, in favour of the claimants/appellants be granted.

d) Cost of this appeal be also be granted, to the appellants, from the respondents.

2. Without going into the merits of the averments made in the application filed by the petitioners under Sections 12 and 13 of the Arbitration Act, at this stage, as the learned arbitrator while passing the order on 28th April, 2007 was fully aware of the Arbitration Petition (Lodging)No. 241/2007 pending before this Court, as referred in the minutes dated 28th April, 2007 and observed in para 4 as under:-

4. Apart from the above, my attention has been invited to application dated 17th April, 2007 filed by the Claimants, with the title " Written Statement of reasons, for the challenge to the Arbitral Tribunal/Arbitrator’s appointment u/s 12 and 13 of the Arbitration and Conciliation Act, 1996". The prayer in the said application at page 16,

in paragraph 13, reads as under:-

> "13. The claimants therefore pray, in the interest of justice, truth, fair play and honesty that:
>
> . this application/ written statement of reasons for challenge, u/s 12 and 13 of Arbitration and Conciliation Act, 1996 be allowed in favour of the claimants and the Hon'ble Arbitrator be pleased to withdraw from this Arbitral Tribunal's office, in accordance with law"

. This application has been numbered as Interim Application No. 23 of 2007.

3. Admittedly, there is no decision and or reasons given on the said applications by the learned arbitrator. In fact, the learned arbitrator has granted time to file reply to both the application Interim Application No.23 and Interim Application No.24 of 1997 in question. While adjourning the matter for hearing even on merits the learned Arbitrator has observed in following terms:-

> . In view of the above, the main Arbitration References are hereby adjourned to 3.00 p.m. on Wednesday, 13th June, 2007 for further hearing on merits at UPS Store, A-1, Mittal Tower, 'A' Wing Ground Floor, 210, Nariman Point, Mumbai 400 021. The Respondents are directed make the necessary

arrangements and communicate to all concerned accordingly.

4. The learned counsel appearing for the petitioners has submitted that in view of Sections 11, 12,13 and 34 the petitioners have no alternative but to file present petition against so called inaction on the part of arbitrator not to decide these applications, before hearing the main matter on merits.

5. Considering the object and scope of the Arbitration Act there is no bar to take decision on such applications simultaneously while considering the merits of the matter. Normally the arbitrator is expected to decide such applications as early as possible, without going further in to the merits of the matter, in the interest of justice. There is nothing on record to show that he has applied his mind to decide or to allow or reject this application. The learned counsel for the respondents, therefore, right in making submission that the apprehension is not correct. There is no case to grant any relief in terms of prayer clause (a) as made by the petitioner in the petition. The petition is pre-mature. there

is no power to the Court to grant reliefs under these sections, as prayed. The petition is not maintainable.

6. At this stage, therefore, I am not inclined to pass any order based on the merits of the applications filed by the petitioners i.e. Interim Application No.23 and Interim Application no.24 of 2007, which are pending before the learned arbitrator.

7. The learned arbitrator is in command of the matter. The arbitrator is free to pass appropriate order.

8. Keeping all points open to both the parties and without expressing anything on merits of the matter including the points raised in the petition, I am dismissing the matter with no order as to costs.

[ANOOP V. MOHTA, J.]